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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
GLENIO JESUA FERREIRA SILVA,
Defendant.

No. CR 07-0678 JSW

**REVISED STIPULATION AND
~~PROPOSED~~ ORDER FOR TAKING
OF RULE 15 MATERIAL WITNESS
DEPOSITIONS**

The parties now stipulate and request that the Court enter an Order pursuant to Fed. R. Crim. P. 15 permitting the taking of deposition of material witnesses GERALDO RODRIGUES and ANDREA FERREIRA DESOUZA.

On June 15, 2007, the Honorable Bernard Zimmerman issued a complaint and arrest warrant charging the defendant with one count of Alien Harboring, in violation of 8 U.S.C. § 1324(a)(1)(A)(iii), and on October 7, 2007, Silva was indicted in a one-count indictment charging the same.¹ (*ECF Document Nos. 1, 21*). The complaint alleged that Silva knowingly

¹ The Complaint was docketed as CR 03-07-70345 BZ.

1 employed illegal aliens at his businesses and permitted several illegal aliens, including
2 GERALDO RODRIGUES and ANDREA FERREIRA DESOUZA, to live in make-shift
3 apartments above his businesses.

4 On January 15, 2008 and February 20, 2008, RODRIGUES and DESOUZA were each
5 arraigned on a complaint charging a violation of Title 18, United States Code, Section 1028(a)(7)
6 - Unlawful Use of an Identity Document.² Each waived a detention hearing on the complaint
7 and remains in custody. On March 4, 2008, after the United States submitted a Application
8 pursuant to Title 18, United States Code, section 3144, the Honorable Joseph C. Spero issued
9 material witness arrest warrants for RODRIGUES and DESOUZA in connection with the above-
10 captioned matter. (*ECF Document No. 30*). On March 11 and 12, 2008, DESOUZA and
11 RODRIGUES, respectively, appeared before the Honorable Joseph C. Spero; were advised of the
12 material witness arrest warrant; and were afforded an opportunity to seek release pursuant to
13 Title 18, United States Code, section 3142. (*ECF Document No. 31, 32*). Each witness waived
14 the right to a detention hearing without prejudice to seek release at a later time.

15 The United States now moves, pursuant to Fed. R. Crim. P. 15(a)(1) for an Order
16 permitting the taking of material witness depositions of RODRIGUES and DESOUZA in
17 connection with the above-captioned matter. Fed. R. Crim. P. 15(a)(1) provides that:

18 a party may move that a prospective witness be deposed in
19 order to preserve testimony for trial. The court may grant
20 the motion because of exceptional circumstances and in the
interest of justice.

21 Courts have routinely held that continued detention of a material witness pending trial
22 constitutes an “exceptional circumstances” as contemplated by Fed. R. Crim. P. 15(a) and is a
23 basis to permit the taking of a deposition. United States v. Lai Fa Chen, 214 F.R.D. 578, 580
24 (N.D. Ca. 2003). Further, this Circuit has held that “No material witness shall be detained
25 because of inability to comply with conditions of release if the testimony of such witness can
26

27 ² These cases were docketed as CR 07-70347 BZ and CR 07-70346 BZ, respectively.
28

adequately be secured by deposition ..." Bacon v. United States, 449 F.2d 933 (9th Cir. 1971).
 To date, no trial date has been set in this matter. The parties contend that the continued
 detention of RODRIGUES and DESOUZA through the time of trial would constitute exceptional
 circumstances" and that permitting a deposition is in the interests of justice.

Accordingly, the parties request an Order permitting the taking of the deposition of
 material witnesses GERALDO RODRIGUES and ANDREA FERREIRA DESOUZA pursuant
 to Fed. R. Crim. P. 15(a). The parties intend to take these depositions in the following manner:
 The deposition date and time will be mutually agreed upon by counsel for the material witness,
 the government, and the defendant. Counsel for each material witness will be present for the
 deposition. In addition to the material witness and his/her counsel, defendant Silva and counsel
 for the United States and Silva will be present at the deposition. The witnesses will be assisted,
 as will defendant Silva, by a certified Portuguese interpreter. With respect to objections, all
 objections except as to form will be reserved until the time of trial. Finally, the proceedings will
 be recorded by a stenographer and video and audio-recorded.

SO STIPULATED:

JOSEPH P. RUSSONIELLO
 United States Attorney

DATED: March 20, 2008

/s/
 DENISE MARIE BARTON
 Assistant United States Attorney

DATED: March 20, 2008

/s/
 STEVEN GRUEL
 Attorney for GLENIO SILVA

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REVISED STIPULATION AND ~~PROPOSED~~ ORDER FOR TAKING OF RULE 15 MATERIAL WITNESS
 DEPOSITIONS - CR 07-0678.

[PROPOSED] ORDER

For the reasons stated in the foregoing stipulation, the Court finds that the continued detention of material witnesses GERALDO RODRIGUES and ANDREA FERREIRA DESOUZA through the time of trial in the above-captioned matter constitutes “exceptional circumstances” under Fed. R. Crim. P. 15(a) and that the taking of depositions of RODRIGUES and DESOUZA is in the interests of justice. Accordingly, this court orders that the depositions of GERALDO RODRIGUES and ANDREA FERREIRA DESOUZA be taken in accordance with Fed. R. Crim. P. 15 in the manner set forth above in the *Revised Stipulation*, with counsel for each material witness present during the taking of the deposition.

Dated: March 21, 2008


HONORABLE JEFFREY S. WHITE
United States District Court Judge